

Key Facts

Private Companies

DIRECTOR'S DUTIES

Every Jersey private company must have at least one director. A director is defined as “a person occupying the position of director, by whatever name called”. On this basis, anybody who acts as a director (whether or not formally appointed as one) has the duties and responsibilities of a director.

Who can be a director?

Directors may either be individuals or companies registered as corporate directors. Note that individuals who are directors of corporate directors can still be personally liable as directors, if in practice they act as the directors of the underlying company.

The following persons may not act as directors:

- an individual who is less than 18 years old;
- an interdict (i.e. somebody who is mentally unwell); or
- a person who has been disqualified from being a director.

The duties of a director

Duty to act in good faith and with due care

A director must:

- act honestly and in good faith with a view to the best interests of the company;
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
- exercise their powers for the purposes for which they were granted and in accordance with the company's Memorandum and Articles of Association.

- not take a personal profit from any opportunities arising from his directorship (and must pay over any such profit to the company).

If a director breaches his duty to act in good faith and with due care as noted above, this will not be treated as a breach under the Companies (Jersey) Law 1991 if the company is solvent and all of the company's shareholders approve the director's actions.

Duty to disclose conflicting interests

A director has a duty to disclose to the company any direct or indirect interest they have in any transaction to be entered into by the company which materially conflicts with the interests of the company. Subject to the company's Articles of Association a Director who has disclosed their conflicting interest may vote and be counted in the quorum at the relevant board meeting considering the transaction.

Duty to find a suitable company secretary

The directors have a duty to find a suitable company secretary. Every company must have a company secretary. A sole director of a company cannot also be the company secretary.

Miscellaneous duties of a director

Statutory books

The directors are responsible for ensuring that the company satisfies the following duties.

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Every company must keep a register of its shareholders (known as members) including the following details:

- each shareholder's name and address;
- the number and class of shares held by each shareholder (including details of whether the shares are fully paid up or not); and the date on which each shareholder became or ceased to be a shareholder.

Every company must keep a register of its directors and secretary, including the following details:

- the name and address of each director and the secretary;
- the nationality, date of birth and business occupation of each director; and
- the date on which each director and the secretary became, or ceased to be, a director or the secretary respectively.

Minutes

Every company must prepare and record minutes of all proceedings at meetings of its shareholders (known as general meetings) and meetings of its directors (known as board meetings) in its company books.

General meetings

Every company must hold an annual general meeting for its shareholders. However, companies may avoid the requirement to hold an annual general meeting if this is approved by all of the shareholders.

Accounts

Every company must keep accounting records which are sufficient to show and explain the transactions of the company and disclose with reasonable accuracy, at any time, the financial position of the company.

Auditors

The directors may at any time appoint auditors to examine the accounts and prepare a report following their examination. However, for a private company, this is optional and there is no legal requirement to appoint auditors.

Annual return

Every company must (before the end of February in every year after its incorporation) deliver to the Companies Registry an annual return, together with a filing fee, which details, amongst other things, the company's registered shareholders and their respective shareholdings.

Indemnity of directors

The Companies Law generally does not allow for a company to provide an indemnity to its directors. However, there are certain exceptions, including an indemnity for any liabilities incurred by a director in successfully defending civil or criminal proceedings and directors and officers' liability (D&O) insurance.

Relief for directors

Under the Companies Law, the court has power to relieve a director of liability in proceedings (or expected proceedings) for negligence, default, breach of duty or breach of trust against a director. Any relief by the court would be provided on the basis that it appears that the director is or may be liable in those proceedings, but that he has acted honestly and having regard to all the circumstances of the case, he ought fairly to be excused.

Companies in financial distress

When a company faces financial distress with the risk of insolvency, whilst the statutory duties remain, the primary focus of a director's duties will be to minimise loss to creditors. Directors facing such a situation should obtain specific legal advice.

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This note is intended as a brief overview of the director's duties for a Jersey private company, and does not represent legal advice.

If required specific legal advice should be sought from a Jersey advocate.

A copy of the Companies (Jersey) Law 1991 as amended may be found at www.jerseylaw.je.

Offices

The Americas/Caribbean

Bahamas

Trident Corporate Services
(Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados

Trident Corporate Services
(Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands

Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Canada

TT Services (Canada) Ltd
T: +1 604 687 0811
vancouver@tridenttrust.com

Cayman Islands

Trident Trust Company
(Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis

Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd

T: +1 869 469 1333
nevis@tridenttrust.com

Panama

Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta
Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Trident Fund Services, Inc

T: +1 404 364 2019
americasfunds@tridenttrust.com

Miami

Integritas, Inc
T: +1 305 405 9006
contact@integritastrust.com

New York

Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls

Trident Trust Company
(South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands

Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong

Trident Corporate Services (Asia) Ltd,
Trident Fund Services (HK) Ltd
& Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand

Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore

Trident Corporate Services
(Singapore) Pte Ltd, Trident Fund
Services (Singapore) Pte Ltd &
Trident Trust Company (Singapore)
Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus

Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Dubai

Trident Trust Company (UAE) Ltd
DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Trident Fund Services (DIFC) Ltd

T: +971 4 277 1191
dubai@tridenttrust.com

Guernsey

Trident Trust Company
(Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man

Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey

Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg

Trident Trust Company
(Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta

Trident Corporate Services
(Malta) Limited &
Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius

Trident Trust Company
(Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles

Trident Trust Company
(Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland

Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom

Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company

Services (UK) Ltd
T: +44 20 7487 0460
corpservices@tridenttrust.com